

ESTTA Tracking number: **ESTTA696363**

Filing date: **09/16/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ArQule, Inc.
Granted to Date of previous extension	09/16/2015
Address	One Wall Street Burlington, MA 01803 UNITED STATES

Attorney information	Christine M. Baker, Esq. Mintz Levin Cohn Ferris Glovsky & Popeo, P.C. 666 Third Avenue, 24th Floor New York, NY 10017 UNITED STATES IPDocketingBOS@mintz.com, cbaker@mintz.com, tedis@mintz.com, RAMc-Carthy@mintz.com Phone:212 935 3000
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Applicant Information

Application No	86454482	Publication date	05/19/2015
Opposition Filing Date	09/16/2015	Opposition Period Ends	09/16/2015
Applicant	O.T.C. CONSUMER PHARMACEUTICAL S.A.S. Cr. 33 Bis #25B - 68 Bogotá, COLOMBIA		

Goods/Services Affected by Opposition


Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Disinfectant soaps and cosmetic soaps for personal use
Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: PHARMACEUTICAL PREPARATIONS AND SUBSTANCES FOR THE TREATMENT OF THE EBOLA DISEASE AND OTHER INFECTIOUS DISEASES; ALL PURPOSE DISINFECTANTS; DISINFECTANTS FOR HYGIENE PURPOSES; ANTISEPTIC PREPARATIONS, NAMELY, HAND SANITIZER USED TO PREVENTOR AVOID TRANSMISSION OF CONTAGIOUS DISEASES, ACTIVE KILLING BACTERIA, FUNGI AND VIRUSES, FOR USE BEFORE OR AFTER PREPARING FOOD, USING THE TOILET, CHANGING DIAPERS, COUGHING, SNEEZING, HANDLING GARBAGE OR ANY CONTAMINATED SURFACE TOUCHED BY AN INFECTED PERSON


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	1991857	Application Date	07/22/1994
Registration Date	08/06/1996	Foreign Priority Date	NONE
Word Mark	ARQULE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1993/10/00 First Use In Commerce: 1993/10/00 research and testing services in the fields of pharmaceuticals, separations and specialty chemicals		

U.S. Registration No.	2300378	Application Date	05/08/1997
Registration Date	12/14/1999	Foreign Priority Date	NONE
Word Mark	ARQULE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1995/00/00 First Use In Commerce: 1995/00/00 libraries of synthesized compounds, namely organic chemical compounds for use in identifying pharmaceuticals, agrichemicals and separations agents		


U.S. Registration No.	3865937	Application Date	06/30/2008
Registration Date	10/19/2010	Foreign Priority Date	NONE
Word Mark	ARQULE		
Design Mark			
Description of	NONE		


Mark	
Goods/Services	Class 005. First use: First Use: 2009/05/31 First Use In Commerce: 2009/05/31 Pharmaceutical preparations, namely, preparations for the treatment of oncological related diseases

U.S. Registration No.	2751917	Application Date	10/02/2001
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	ARQULE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2000/09/00 First Use In Commerce: 2000/09/00 libraries of synthesized compounds, namely organic chemical compounds for use in identifying pharmaceuticals, agrichemicals and separations agents Class 042. First use: First Use: 1999/10/00 First Use In Commerce: 1999/10/00 research and testing services in the fields of pharmaceuticals, separations and specialty chemicals		

U.S. Registration No.	3865936	Application Date	06/30/2008
Registration Date	10/19/2010	Foreign Priority Date	NONE
Word Mark	ARQULE		
Design Mark			
Description of Mark	The mark consists of three cubes stacked in an upwardly curving manner, with differing axial orientations, positioned to the left of the word "ARQULE".		
Goods/Services	Class 005. First use: First Use: 2009/05/31 First Use In Commerce: 2009/05/31 Pharmaceutical preparations, namely, preparations for the treatment of oncological related diseases		

U.S. Application No.	85694962	Application Date	08/03/2012
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	ARQULE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 House mark for pharmaceutical preparations, namely, preparations for the treatment of neurological, metabolic and inflammation related diseases		

U.S. Application No.	85694978	Application Date	08/03/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ARQULE		
Design Mark			
Description of Mark	The mark consists of three cubes stacked in an upwardly curving manner, with differing axial orientations, positioned to the left of the word element.		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 House mark for pharmaceutical preparations, namely, preparations for the treatment of neurological, metabolic and inflammation related diseases		

Attachments	75288872#TMSN.png(bytes) 77980324#TMSN.png(bytes) 76320463#TMSN.png(bytes) 77980323#TMSN.png(bytes) 85694962#TMSN.png(bytes) 85694978#TMSN.png(bytes) NoticeofOppositionAgainstAKUELACTIVEKILLINGEBOLAVIRUS.PDF(239347 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by First Class Mail on this date.

Signature	/cmbaker/
Name	Christine M. Baker, Esq.
Date	09/16/2015

Attorney Docket: 22596-907
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 86/454482
for AKUEL ACTIVE KILLING EBOLA VIRUS
Published in the *Official Gazette* on May 19, 2015

ArQule, Inc.

Opposer,

v.

O.T.C. Consumer Pharmaceutical S.A.S.

Applicant.

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APPLICATION NO. 86/454482
OPPOSITION NO.: TBA

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir/Madam:

ArQule, Inc. ("Opposer"), a corporation organized under the laws of Delaware with a business address at One Wall Street, Burlington, Massachusetts 01803, believes it will be damaged by the registration of U.S. Application Serial No. 86/454482 for the mark AKUEL ACTIVE KILLING EBOLA VIRUS for the following goods:

Disinfectant soaps and cosmetic soaps for personal use, in International Class 003; and

Pharmaceutical preparations and substances for the treatment of the Ebola disease and other infectious diseases; all-purpose disinfectants; disinfectants for hygiene purposes; antiseptic preparations, namely, hand sanitizer used to prevent or avoid transmission of contagious diseases, active killing bacteria, fungi and viruses, for use before or after preparing food, using the toilet, changing diapers, coughing, sneezing, handling garbage or any contaminated surface touched by an infected person, in International Class 005,

which was filed by O.T.C. Consumer Pharmaceutical S.A.S. ("Applicant") and published for opposition in the *Official Gazette* on May 19, 2015, and hereby opposes the same.

Pursuant to 15 U.S.C. § 1063 (as amended), and predicated upon the following grounds, Opposer alleges the following:

1. Opposer is a biotechnology company that conducts research, develops and commercializes pharmaceutical preparations to treat oncological, neurological, metabolic and inflammation related diseases and rare diseases. Opposer combines innovative, proprietary technology with world-class chemistry to generate therapeutics that target biological pathways. Opposer is internationally recognized for its goods and services and has a website located at www.arqule.com.

2. Opposer owns a family of ARQULE marks which includes U.S. Registration Nos. 1,991,857; 2,300,378 and 3,865,937 for the mark ARQULE and 2,751,917 and 3,865,936 for the marks ARQULE and Design and U.S. Trademark Application Serial Nos. 85/694962 and 85/694978 for the marks ARQULE and ARQULE Design for the following goods and services:

Registration No. 1,991,857:

IC 042. Research and testing services in the fields of pharmaceuticals, separations and specialty chemicals

Registration No. 2,300,378:

IC 001. Libraries of synthesized compounds, namely, organic chemical compounds for use in identifying pharmaceuticals, agrochemicals and separations agents

Registration No. 3,865,937:

IC 005. Pharmaceutical preparations, namely, preparations for the treatment of oncological related diseases

Registration No. 2,751,917:

IC 001. Libraries of synthesized compounds, namely, organic chemical compounds for use in identifying pharmaceuticals, agrochemicals and separations agents

Registration No. 3,865,936:

IC 005. Pharmaceutical preparations, namely, preparations for the treatment of oncological related diseases

Application Serial No. 85/694962:

IC 005. House Mark for pharmaceutical preparations, namely, preparations for the treatment of neurological, metabolic and inflammation related diseases

Application Serial No. 85/694978:

IC 005. House Mark for pharmaceutical preparations, namely, preparations for the treatment of neurological, metabolic and inflammation related diseases

Copies of the five U.S. Certificates of Registration and USPTO TESS records for the pending Applications are attached

hereto and incorporated herein by reference as Exhibit A. ("Opposer's family of ARQULE Marks").

3. Upon information and belief, the Applicant is a corporation organized under the laws of Colombia with a business address at Cr. 33 Bis #25B-68, Bogota, Columbia. Applicant seeks to register the mark AKUEL ACTIVE KILLING EBOLA VIRUS for disinfectant soaps and cosmetic soaps for personal use in International Class 003 and pharmaceutical preparations and substances for the treatment of the Ebola disease and other infectious diseases; all-purpose disinfectants; disinfectants for hygiene purposes; antiseptic preparations, namely, hand sanitizer used to prevent or avoid transmission of contagious diseases, active killing bacteria, fungi and viruses, for use before or after preparing food, using the toilet, changing diapers, coughing, sneezing, handling garbage or any contaminated surface touched by an infected person in International Class 005 pursuant to an intent-to use trademark application under Trademark Section 1(b) filed on November 14, 2014, which has been assigned Application Serial No. 86/454482.

4. Opposer has used its ARQULE mark in the United States since, at least, 1993 and over the past (22) twenty-two years, the applicant has expended significant time and substantial resources promoting its family of ARQULE Marks as source identifiers for its goods and services. As a result of its efforts, Opposer has established a well-known reputation under its family of ARQULE Marks in the same market in which and to the same customers to which Applicant does or will market and sell its goods. Therefore, it is highly likely that confusion will occur between the marks at issue.

5. Applicant's alleged mark and, particularly the term AKUEL, which is the dominant element in the Applicant's alleged mark, is visually and phonetically similar to and conveys the same commercial impression as the Opposer's family of ARQULE Marks. Since the Applicant's alleged mark is confusingly similar to the Opposer's family of ARQULE Marks, consumers are likely to falsely believe that the Applicant's goods emanate from or are an extension of the Opposer's goods and services.

6. On information and belief, Applicant's goods are closely related to the Opposer's goods and services and will travel in the same channels of trade and be marketed to the same consumer groups as Opposer's goods and services.

7. Given the similarities between the marks and the relatedness of the Opposer's goods and services and

the Applicant's goods, Applicant's alleged mark is likely to cause confusion and mistake and to deceive purchasers and potential purchasers into erroneously believing that a relationship exists between Opposer and Applicant, or that Opposer has authorized, sponsored, or licensed Applicant's use of the mark AKUEL ACTIVE KILLING EBOLA VIRUS, in violation of 15 U.S.C. §1052(d).

8. Registration of Applicant's alleged mark will damage Opposer since such registration will give color of exclusive statutory rights to Applicant in the mark AKUEL ACTIVE KILLING EBOLA VIRUS in derogation and violation of the prior and superior federal rights of Opposer in its family of ARQULE Marks.

WHEREFORE, Opposer believes that it will be damaged by the registration of U.S. Application Serial No. 86/454482 for the mark AKUEL ACTIVE KILLING EBOLA VIRUS and, therefore, respectfully requests that the Trademark Trial and Appeal Board refuse registration of Applicant's proposed mark under 15 U.S.C. §1052(d).

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "CHM. Baker", written over a horizontal line.

Christine M. Baker, Esq.
MINTZ, LEVIN, COHN, FERRIS
GLOVSKY and POPEO, PC
666 Third Avenue
New York, NY 10017
(212) 935-3000
(212) 983-3115 (Fax)
Attorneys for Opposer,
ArQule, Inc.

Dated: September 16, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Applicant's counsel of record by mailing said copy on September 16, 2015 via First Class Mail to: Arturo Perez-Guerrero, Esq., Law Offices of Arturo Perez-Guerrero, P.O. Box 9024163, San Juan, Puerto Rico 00902-4163.


Christine M Baker

EXHIBIT A

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 1,991,857

United States Patent and Trademark Office Registered Aug. 6, 1996

**SERVICE MARK
PRINCIPAL REGISTER**

ARQULE

ARQULE INC. (DELAWARE CORPORATION)
200 BOSTON AVENUE, SUITE 3600
MEDFORD, MA 02155

FIRST USE 10-0-1993; IN COMMERCE
10-0-1993.

FOR: RESEARCH AND TESTING SERVICES
IN THE FIELDS OF PHARMACEUTICALS,
SEPARATIONS AND SPECIALTY CHEMI-
CALS, IN CLASS 42 (U.S. CLS. 100 AND 101).

SN 74-554,746, FILED 7-22-1994.

JESSIE B. BILLINGS, EXAMINING ATTORNEY

Int. Cl.: 1

Prior U.S. Cls.: 1, 5, 6, 10, 26, and 46

Reg. No. 2,300,378

United States Patent and Trademark Office

Registered Dec. 14, 1999

**TRADEMARK
PRINCIPAL REGISTER**

ARQULE

ARQULE INC. (DELAWARE CORPORATION)
200 BOSTON AVENUE, SUITE 3600
MEDFORD, MA 02155

FIRST USE 0-0-1995; IN COMMERCE
0-0-1995.

OWNER OF U.S. REG. NO. 1,991,857.

FOR: LIBRARIES OF SYNTHESIZED COM-
POUNDS, NAMELY ORGANIC CHEMICAL
COMPOUNDS FOR USE IN IDENTIFYING
PHARMACEUTICALS, AGRICHEMICALS AND
SEPARATIONS AGENTS, IN CLASS 1 (U.S.
CLS. 1, 5, 6, 10, 26 AND 46).

SN 75-288,872, FILED 5-8-1997.

CHARLES L. JENKINS, EXAMINING ATTOR-
NEY

United States of America

United States Patent and Trademark Office

ARQULE

Reg. No. 3,865,937

Registered Oct. 19, 2010

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

ARQULE, INC. (DELAWARE CORPORATION)
19 PRESIDENTIAL WAY
WOBBURN, MA 01801

FOR: PHARMACEUTICAL PREPARATIONS, NAMELY, PREPARATIONS FOR THE TREATMENT OF ONCOLOGICAL RELATED DISEASES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-31-2009; IN COMMERCE 5-31-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,991,857, 2,300,378, AND 2,751,917.

SN 77-980,324, FILED 6-30-2008.

CORY BOONE, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

Int. Cls.: 1 and 42

Prior U.S. Cls.: 1, 5, 6, 10, 26, 46, 100 and 101

United States Patent and Trademark Office

Reg. No. 2,751,917

Registered Aug. 19, 2003

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



ARQULE, INC. (DELAWARE CORPORATION)
19 PRESIDENTIAL WAY
WOBURN, MA 01801

FOR: LIBRARIES OF SYNTHESIZED COM-
POUNDS, NAMELY ORGANIC CHEMICAL COM-
POUNDS FOR USE IN IDENTIFYING
PHARMACEUTICALS, AGRICHEMICALS AND SE-
PARATIONS AGENTS, IN CLASS 1 (U.S. CLS. 1, 5, 6,
10, 26 AND 46).

FIRST USE 9-0-2000; IN COMMERCE 9-0-2000.

FOR: RESEARCH AND TESTING SERVICES IN
THE FIELDS OF PHARMACEUTICALS, SEPARA-
TIONS AND SPECIALTY CHEMICALS, IN CLASS 42
(U.S. CLS. 100 AND 101).

FIRST USE 10-0-1999; IN COMMERCE 10-0-1999.

OWNER OF U.S. REG. NOS. 1,991,857 AND
2,300,378.

SER. NO. 76-320,463, FILED 10-2-2001.

BRIAN BROWN, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 3,865,936

Registered Oct. 19, 2010

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

ARQULE, INC. (DELAWARE CORPORATION)
19 PRESIDENTIAL WAY
WOBURN, MA 01801

FOR: PHARMACEUTICAL PREPARATIONS, NAMELY, PREPARATIONS FOR THE TREATMENT OF ONCOLOGICAL RELATED DISEASES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-31-2009; IN COMMERCE 5-31-2009.

OWNER OF U.S. REG. NOS. 1,991,857, 2,300,378, AND 2,751,917.

THE MARK CONSISTS OF THREE CUBES STACKED IN AN UPWARDLY CURVING MANNER, WITH DIFFERING AXIAL ORIENTATIONS, POSITIONED TO THE LEFT OF THE WORD "ARQULE".

SN 77-980,323, FILED 6-30-2008.

CORY BOONE, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office


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ARQULE

Word Mark	ARQULE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: House mark for pharmaceutical preparations, namely, preparations for the treatment of neurological, metabolic and inflammation related diseases
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85694962
Filing Date	August 3, 2012
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	February 12, 2013
Owner	(APPLICANT) ArQule, Inc. CORPORATION DELAWARE 19 Presidential Way Woburn MASSACHUSETTS 01801
Attorney of Record	Christine M. Baker
Prior Registrations	1991857;2300378;2751917;3865936;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Word Mark	ARQULE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: House mark for pharmaceutical preparations, namely, preparations for the treatment of neurological, metabolic and inflammation related diseases
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.19.04 - Cubes (geometric)
Serial Number	85694978
Filing Date	August 3, 2012
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	February 12, 2013
Owner	(APPLICANT) ArQule, Inc. CORPORATION DELAWARE 19 Presidential Way Woburn MASSACHUSETTS 01801
Attorney of Record	Christine M. Baker
Prior Registrations	1991857;2300378;2751917;3865936;AND OTHERS
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of three cubes stacked in an upwardly curving manner, with differing axial orientations, positioned to the left of the word element.

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

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